

## ***Chapter 4 – Procurement Procedures***

### ***A. Introduction***

Procurement requirements differ depending on who is doing the procurement. This section outlines requirements which must be followed when procuring all professional services. The Chapter discusses the requirements for municipalities: cities, towns, and counties. The second portion of the chapter outlines the requirements for securing the use of administrative services from either the staff of the award recipient, and subrecipient or a contractor. The last section discusses required contract provisions, cost price analysis, retainage and bonding requirements, conflict of interest, retention and debarment procedures.

### ***B. Procurement by Local Units of Governments***

If a local unit of government is the recipient of the CDBG or HOME award, the local unit of government's procurement standards must be used in *all* phases of procurement. Always consult with the award recipient's legal counsel prior to initiating procurement activities.

**The most stringent procurement standard applies to procurement by cities, towns, and counties. Both state and federal law govern this type of procurement. These standards apply whether procurement is performed by staff, a subrecipient or a contractor of the municipality receiving the funds.**

#### **1. Federal Regulations**

- a. CFR Part 85 (located at <http://www.access.gpo.gov/nara/cfr/>)
- b. OMB Circular A-102 (located at <http://www.whitehouse.gov/omb/>)
- c. OMB Circular A-87 (located at <http://www.whitehouse.gov/omb/>)

#### **2. Indiana Procurement Laws (applicable to cities, towns, and counties)**

- a. Public Purchases Law - materials, equipment, goods and supplies IC-36-1-9.
- b. Public Works Law - Construction, alteration, or repair of any public building or any other work or improvement of any character IC-36-1-12.

#### **3. Procurement Responsibility**

Municipalities must designate a purchasing officer for CDBG or HOME purchases and procurement activities. Written procurement procedures should be in place. Small communities may rely on the community's engineer, consultant, building inspector, public works director, or legal counsel to assist in the procurement process. The purchasing officer is responsible for the following:

- a. Determining the need for procurement of supplies, equipment, construction or, services based on the project plan.
- b. Assigning appropriate persons to prepare specifications, manage solicitations, and negotiate contract terms.
- c. Monitoring solicitation of bids including preparation of bid specifications, advertising, receipt, and evaluation of bids.
- d. Participating in the final selection of contractors.

- e. Overseeing pre-construction activities and negotiations.
  - f. Overseeing the execution of contracts.
  - g. Determining that the purchase is in compliance with the conflict-of-interest requirement: no member, officer, or employee of the award recipient or its designees or agents, no member of the governing body of the locality in which the program in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during their tenure, or for one year thereafter, shall have any direct or indirect interest in any contract, subcontract, or proceeds thereof, financed in whole or in part with CDBG or HOME funds.
4. Procurement of materials and supplies estimated to be in excess of \$25,000 must be procured through the competitive sealed bid method. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.
5. Professional services over \$25,000, such as engineering or consulting services, must be procured by the competitive negotiation method if the competitive sealed bid method is not used. Purchases may not be made in multiple increments to avoid formal competitive sealed bid procedures.

### ***Local Unit of Government Procurement Methods***

There are four (4) allowable methods of procurement: 1) competitive sealed bids, 2) competitive negotiation, 3) small purchases, 4) noncompetitive and sole source purchases. For the purposes of CHDO Works, Subrecipient Agreement, and CDBG Planning Studies, the three latter methods are recommended and addressed below. A synopsis of the methods and requirements follows; however, this information should not be considered a substitute for reviewing the applicable state laws and federal circulars.

## **2. Competitive Negotiation Procedure**

The competitive negotiation method is recommended for all procurement of professional services.

The procurer prepares a formal Request for Proposals (RFP) and requests proposals from at least two (2) or more qualified firms or individuals. Negotiations should be conducted with more than one of the responding sources.

If competitive negotiation is used, the following requirements apply:

- a. Preparation of Request for Proposals (RFP). The RFP should include these elements, at a minimum:
  - (1) Scope of Services - detailed description of the extend and type of work to be performed.
  - (2) Time Requirements - performance period.
  - (3) Considerations for Bidding - any additional requirements not pertaining to the scope of services that would be considered when preparing a proposal.
  - (4) Proposal Instructions - the format of the proposal.
  - (5) Evaluation of Proposals - The award recipient must identify all significant evaluation factors (and their relative importance), including price or cost where required, technical expertise, past experience, price, staffing, etc. and how the proposals received will be scored.

- (6) Federal, state, and local regulations applicable to the award.
- b. **The RFP must not be prepared or solicited by those firms or individuals who will be submitting proposals.**
- c. Proposals must be solicited from at least two qualified sources to permit reasonable competition. Efforts must be made (and documented) to attract proposals from small businesses, minority-owned businesses, and women's business enterprises. You may get this directory from [www.in.gov/idoa/minority/mbdirectory.html](http://www.in.gov/idoa/minority/mbdirectory.html). IHFA has a ten percent (10%) goal for participation by such firms in CDBG or HOME-funded projects.
- d. The RFP must be publicized and reasonable requests by competing sources must be honored to the maximum extent possible. The award recipient must retain documentation of the RFP distribution process.
- e. Evaluation of Proposals. When proposals or statements of qualification are received, they should be evaluated by the award recipient based upon pre-established criteria. Evaluation criteria commonly used include the following, at a minimum:
- (1) Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
  - (2) Past record of performance on such CDBG or HOME-funded contracts within the State of Indiana, and a list of other clients served including type of work, timeliness, quality requirements, and cost control. References submitted by proposers should be contacted.
  - (3) Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
  - (4) Familiarity of the firm with the type of problems applicable to the project.
  - (5) Price. *(The method, where price is not used as a selection factor, can only be used in procurement of architectural and engineering professional services. It cannot be used to purchase other types of services though architectural and engineering firms are a potential source to perform the proposed effort.)*
- f. The review process for both statements of qualification and proposals in response to a Request for Proposal should be thorough, uniform, and well-documented. The review process is to be conducted by a committee or board which, to the greatest extent possible, includes persons with the appropriate technical skills. Reviewers must have no conflicts of interest with the firms or individuals under review, such as family relationship, close friendship or business partnerships.
- g. Negotiations should be conducted with more than one of the sources submitting proposals. Retain verifiable documentation recording the negotiations process.
- h. Award must be made to the responsible offeror whose proposal will be the most advantageous to the project, considering price and other factors. Unsuccessful bidders must be promptly notified. When the award is made to a responsible bidder not having the lowest price, the award recipient must document its reasons for not selecting the lowest proposed price.
- i. The award recipient must then establish a contract file which contains the following:

1. A description of the method used to select architect, engineer, or consultant.
2. Qualification statements or proposals received.
3. Negotiation methods.
4. Cost and pricing data supporting the contract.
5. Verification of contractor eligibility.
6. Contract for services.
7. Records of progress payments including retainage withheld.
8. Contract change orders, if any.

### 3. **Small Purchases Procedures: For services and supplies ONLY not construction contracts**

Small purchase procedures are those relatively simple and informal procurement methods appropriate for procurement of services, supplies, or other property, costing not more than \$25,000.

- a. **Services Under \$25,000** - Although competitive negotiation is the recommended method for procuring all professional services, the small purchase procedure is also acceptable.

- (1) At a minimum, two quotes shall be reviewed from qualified, responsible firms.
- (2) At a minimum one quote attempt must be documented from an MBE/WBE firm.
- (3) Receipt of these price quotes must be well-documented and a record of the procedure used must be maintained by the award recipient.
- (4) If a firm is selected on a basis other than price, the reason for the selection must be well-documented and maintained by the award recipient.

- b. **Supplies and Materials Under \$25,000** - When the small purchases method is used for procuring supplies and materials, the award recipient may purchase on the open market or may invite quotes from not less than two vendors.

If the award recipient purchases on the open market, at least two informal price quotations should be obtained using the “Informal Price Quotation Form” (Exhibit A). If the Award recipient chooses to invite formal quotes, a “Request for Quotation Form” (Exhibit B) should be completed.

### 4. **Non-Competitive and Sole Source Purchases:**

Competitive procurement should be used whenever possible. Non-competitive proposals may be used only when the other three methods are not feasible; award files must document such a determination. This method shortens the procurement process; however, there must still be written bid specifications for construction and scope of services for professional service contracts.

Non-competitive negotiation may only be used in one of the following circumstances:

- a. Public urgency will not permit a delay for competitive solicitation.
- b. The item desired is available from only one source.
- c. After solicitation of a number of sources, competition is determined inadequate.

Any community wishing to utilize sole source procurement must first obtain approval from IHFA. This can be accomplished by sending a letter that details the efforts undertaken to obtain multiple bids and the reason sole source procurement was selected. Sole source procurement is discouraged and must be well documented to avoid denial or disallowance by IHFA staff and Indiana State Board of Accounts examiners.

### ***C. Contractor Verification***

Prior to bid award, you must verify that all contractors bidding on the project are not listed on the HUD Debarred list. To check the status, submit Exhibit C to the IHFA Compliance Assistant. Do not execute a contract until you have received written confirmation from IHFA that the entity is not on the HUD Debarred List.

### ***D. Administrative and Other Professional Services***

#### **1. Administrative Services by Staff of an Award recipient**

A city, town, county, or not-for-profit award recipient may elect to perform some or all administrative and professional services functions in-house. The award recipient may be reimbursed for the direct costs of administrative and other professional services functions. All reimbursement payments must be made to the city, town, county, or not-for-profit's "force" account.

Award recipient employees may not be paid extra for performing award administration during the course of their standard work schedule. However, if an employee is selected to perform the services through a competitive procurement process, the services must be performed on their own time (not during regular work hours), and they may receive reimbursement above their standard salary.

#### **2. Administrative Services by a Subrecipient**

Many award are applied for on behalf of subrecipients. Subrecipients are governmental or private not-for-profit status entities, having federal not-for-profit status, that carry out the primary award activity. A governmental not-for-profit is a public agency that is independent of a local unit of government award recipient such as public housing authorities, neighborhood-based not-for-profit organizations, regional planning commissions, and local development corporations. An applicant may provide these subrecipients with CDBG or HOME funds for their use in carrying out agreed-upon eligible activities.

By agreement with the recipient city, town, or county, these entities may assume all administrative and professional services requirements of the award, if they are also operating the primary award activity. The subrecipient is reimbursed on a **direct cost basis** (costs actually incurred and so documented) only for costs that are reasonable and necessary to project administration.

#### ***Receipt of Funds by Subrecipients***

1. In some instances, not-for-profit organizations qualify as direct recipients of HOME awards. In other cases, a not-for-profit entity may receive CDBG or HOME funds as either a subrecipient or a target of assistance.

Subrecipients are governmental or private not-for-profit entities having federal not-for-profit status. An applicant may provide these subrecipients with CDBG or HOME funds for their use in carrying out agreed upon eligible activities.

In contrast, a target of assistance is the owner of a project or property. For example, a not-for-profit organization could operate a housing rehabilitation program for senior

citizens as a subrecipient. A not-for-profit, as a target of assistance, could receive funds to purchase and/or rehabilitate an apartment building that will house senior citizens.

In either instance, the community does not need to “procure” the not-for-profit. However, where a not-for-profit simply wishes to provide administrative services to the community, such services must be competitively procured. The critical distinction is whether the major award activity is within the normal course of activity for the not-for-profit.

2. There must be a contractual agreement between the award recipient and the not-for-profit. As a target of assistance, the not-for-profit is not treated any differently than any other private owner of real estate (See Section D).
3. As a subrecipient, there must be a subrecipient agreement executed that includes:
  - a. A statement of work describing the work to be performed, a schedule for completing the work, and a budget. These items must be described in sufficient detail to allow the award recipient (recipient governmental unit) to effectively monitor the subrecipient’s performance;
  - b. A description of what records the subrecipient must keep and what records it must submit in order to assist the award recipient in meeting its record-keeping and reporting requirements;
  - c. A description of how any program income expected to be generated will be handled;
  - d. A statement of applicable uniform Administrative requirements such as Treasury Circulars A-110 and A-128;
  - e. A clause for suspension and termination of agreements for noncompliance and convenience;
  - f. A statement of reversion of CDBG or HOME-funded assets at the time the agreement expires;
  - g. A statement of any federally approved indirect cost allocation plans and the name of the approving cognizant agency(s);
  - h. A description of other program requirements such as labor standards, fair housing requirements, with the exceptions that subrecipients do not assume the award recipient’s environmental responsibilities;
  - i. A copy of the not-for-profit’s 501(c) tax exempt certification should be attached to the agreement.
4. The award recipient has the responsibility of monitoring its subrecipients. While IHFA does not prescribe how that monitoring should take place, we suggest that the Award recipient at least follow the monitoring guidelines found in Chapter 17 (Program Monitoring & Audit).
5. Ultimately, it is the award recipient (local unit of government) that will be held accountable for all aspects of award administration and program compliance.
6. Subrecipient not-for-profits may serve as the administrator for the award recipient without competition as long as the following conditions are met:

- a. The subrecipient is also operating the funded housing activity; and
  - b. That activity is a usual and customary activity of the subrecipient;
7. Not-for-profit entities that wish to only provide administrative services whether to a award recipient or subrecipient, may only be procured through competitive bidding that meets the applicable requirements for the procurer.

### 3. **Administrative Services by a Contractor**

A contractor may be a for-profit entity, a not-for-profit, or a municipal employee. A contractor may perform administrative or professional services as a stand-alone activity or in conjunction with other activities.

The competitive negotiation method is recommended for all procurement of professional services, regardless of dollar amounts, and is required for all services contracts over \$25,000 if the competitive sealed bid method is not used.

Administrative and services costs may not be bid by “fixed price”, except for repetitive, low cost services such as legal opinions for title, or accounting review of proforma. All other procurement of services must be at an hourly rate, with an estimate of the number of hours required to accomplish the task. Different activities may be bid at different rates. Both the rates and the number of hours for the task must be available for review by the award recipient, subrecipient; IHFA, HUD, or their designated representatives.

### ***E. Required Contract Provisions***

#### **1. All CDBG or HOME-funded contracts must include the following provisions:**

- a) Effective date of contract.
- b) Names and addresses of award recipient or subrecipient and contractor.
- c) Names of representatives of award recipient or subrecipient and contractor who will act as liaison for administration of the contract.
- d) A citation of the authority of the award recipient under which the contract is entered into and the source of funds.
- e) Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- f) Provisions for termination by the award recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- g) Scope of Services:
  - (1) Detailed description of extent and character of the work to be performed.
  - (2) Time for performance and completion of contract services, including project milestones, if any.
  - (3) Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).

- (4) An access to records clause including a provision that all negotiated contracts awarded by recipients shall include a provision to the effect that the state, the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
  - (5) A Conflict of Interest Clause.
  - (6) Provisions for compensation of services, including the basis for submission of billings as the work progresses and specification of the total contract amount.
- h) Bonding and Insurance Requirements, if applicable
- i) Federal Standards Provisions (See Exhibit D):
  - (1) Equal Employment Opportunity - Executive Order 11246: Equal Opportunity Clause, goals for female and minority participation and implementing regulations
  - (2) Rights to Inventions Made Under a Contract or Agreement
  - (3) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended
  - (4) Byrd Anti-Lobbying Amendment (31 U.S.C.1352)
  - (5) Debarment and Suspension (Executive Orders 12549 and 12689)

#### ***F. Cost Price Analysis***

Two or more responsible vendors must be willing and able to compete for each contract. If only one bid is received, the award recipient must perform a “cost-price analysis” to substantiate the reasonableness of the bid price received.

Outlined below are the procedures for performing a cost-price analysis. Additionally, award recipients should consult their IHFA Compliance Specialist prior to completing a cost-price analysis. Two options are given and either option is an acceptable measure:

1. Request from the single bidder a breakdown of the labor costs, material costs, and profit from his/her bid. This information will allow the procuring agency to evaluate reasonableness of the amount of profit built into the bid and the appropriateness of the material and labor costs. The federal regulations do not establish any maximums for these three categories; however, a reasonableness test should be made in relation to the scope of work being bid.
2. Ask another contractor that performs the type of work that was bid to provide an estimate of cost. This estimate must be on the letterhead of the contractor and must be in writing.

#### ***G. Conflict of Interest***

Award recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by CDBG or HOME funds. No employee, officer or agent of the award recipient shall participate in selection, award, or administration of a contract supported by CDBG or HOME funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when one of the following has a financial or other interest in the firm selected for an award:



- a. The employee, officer or agent;
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The award recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. However, award recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the award recipient's officers, employees, or agents or by contractors or their agents.

#### ***H. Notice of Contract Award***

After you have executed a contract, complete Exhibit E, "Notice of Contract Execution", and submit via mail, fax or email to the IHFA Compliance Assistant. IHFA staff will ensure this form has been submitted prior to paying claims on the your awards.

#### ***Codes***

##### ***\*Type of Trade Code:***

- 1 - New Construction
- 2 - Rehabilitation
- 3 - Project Management/Administration
- 4 - Professional
- 5 - Education/Training
- 6 - Architect/Engineering/Appraisal
- 7 - Other

##### ***\*\*Racial/Ethnic Codes:***

- 1 - White
- 2 - Black Americans
- 3 - Native Americans
- 4 - Hispanic Americans
- 5 - Asian or Pacific Islander
- 0 - Public Agency/Non-Profit

#### ***I. Retention and Custodial Requirements***

1. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three (3) years, with the following qualifications:

- a. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
  - b. Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after final disposition.
  - c. When records are transferred to or maintained by IHFA, the three-year retention requirement is not applicable to the award recipient.
3. The retention period starts from the date of the submission of the final expenditure report.
4. Award recipients must receive authorization from IHFA if they desire to substitute microfilm copies in lieu of original records.
5. IHFA shall request transfer of certain records to its custody from award recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, IHFA may make arrangements with award recipients to retain any records that are continuously needed for joint use.
6. IHFA, HUD, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of award recipients and subaward recipients to make audits, examinations, excerpts, and transcripts.
7. Unless otherwise required by law, no federal grantor agency shall place restrictions on award recipients that will limit public access to the records of award recipients that are pertinent to an award except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

***J. Award recipient and Contractor Debarment Procedures (55 IAC Art.6):***

1. In order to address potential recurring problems, the State of Indiana has codified statutory proceedings which apply to any federal or state program administered by the State agencies, including IHFA's CDBG or HOME program.
2. A person and/or contractor may be debarred if any of the following have occurred within a reasonable period of time before institution of debarment proceedings:
  - a) Serious or repetitive violation of any federal or state law, or IHFA program regulation or instruction.
  - b) Serious or repetitive failure to perform contractual obligations or carry out representations or warranties to IHFA or to any award recipient under any program administered by IHFA.
  - c) Acts of misconduct indicating a lack of business integrity directly affecting responsibility to participate in IHFA programs, including but not limited to false representation, embezzlement, theft, forgery, fraud, negligent service, bribery, falsification of records, and receipt of stolen property.
  - d) Serious or repetitive violation of any non-discrimination or equal opportunity requirements in connection with any program administered by IHFA.
  - e) Debarment from any agency of the federal government or of any state government.

3. Award recipients and contractors receiving awards or compensation under IHFA's CDBG or HOME program who commit serious or repetitive violations of CDBG or HOME regulations or this *Implementation Manual* are subject to such debarment proceedings. Those award recipients and/or contractors who are debarred by IHFA from further participation in IHFA's CDBG or HOME program will be given the right to appeal such debarment.
4. The U.S. Department of Housing and Urban Development (HUD) has also established debarment procedures. Contractors receiving awards or compensation under IHFA's CDBG or HOME program who commit serious or repetitive violations of CDBG or HOME regulations may also be debarred by HUD.

***K. Procurement Exhibits***

- A. Informal Price Quotation Form
- B. Formal Price Quotation Form
- C. Verification of Contractor & Subcontractor Eligibility
- D. Federal Contract Provisions
- E. Notice of Contract Execution